

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EBER GENE RUTH,

No. C 09-1861 SI (pr)

Petitioner,

ORDER OF DISMISSAL

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Eber Gene Ruth, a prisoner at Mule Creek State Prison, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is not his first federal habeas petition concerning his 1993 murder conviction from the Del Norte County Superior Court. His first habeas petition was filed on July 24, 1996 and denied on the merits on July 25, 1997. See Ruth v. Cambra, N. D. Cal. No. C 96-2626 SBA. Three later petitions filed by Ruth were dismissed without prejudice as successive. See Ruth v. Cambra, No. C 01-1502 SBA; Ruth v. Warden, No. C 02-1124 SBA; Ruth v. Warden, No. C 02-1578 SBA. He also sought permission from the Ninth Circuit to file a second or successive petition, but the Ninth Circuit denied his request. See Ruth v. Warden, Ninth Cir. No. 06-74362.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Ruth has not obtained such an order from the Ninth Circuit. This court will not entertain a new petition from Ruth until he first

1 obtains permission from the Court of Appeals for the Ninth Circuit to file such a petition. This
2 action is DISMISSED without prejudice to Ruth filing a petition in this court after he obtains
3 the necessary order from the Court of Appeals for the Ninth Circuit.


4 If Ruth wants to attempt to obtain the necessary order from the Ninth Circuit, he should
5 very clearly mark the first page of his document as a "MOTION FOR ORDER AUTHORIZING
6 DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION PURSUANT
7 TO 28 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas petition because the Ninth
8 Circuit clerk's office is apt to simply forward to this court any document labeled as a habeas
9 petition. He also should mail the motion to the Ninth Circuit (at 95 Seventh Street, San
10 Francisco, CA 94103), rather than to this court. In his motion to the Ninth Circuit, he should
11 explain how he meets the requirements of 28 U.S.C. § 2244(b).

12 Respondent's motion to dismiss is GRANTED. (Docket # 6.) Petitioner's motion to
13 appeal is DENIED. (Docket # 7.)

14 The clerk shall close the file.

15 IT IS SO ORDERED.

16 DATED: May 5, 2010



SUSAN ILLSTON
United States District Judge